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January 13, 2006

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW (7<sup>th</sup> fl.)  
Washington, DC 20423-0001

Dear Secretary Williams:

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This refers to STB Dockets No. AB-6 (Sub-No. 430X), BNSF Railway Company-Abandonment Exemption-In Oklahoma County, OK, and No. AB-104X, Stillwater Central Railroad, Inc.-Discontinuance of Service Exemption-In Oklahoma County OK, and to Applicants' Reply, filed January 12, 2006.

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Petitioners, Bio-Energy Wellness Center and North American Transportation Institute, are mindful of 49 C.F.R. 1104.13 and the disallowance of the filing of a reply to a reply. The Board's regulation, however, was not intended to bar inviting the agency's attention to the misrepresentation of the record and mischaracterization of cited decisions in a reply.

At page 3 of their Statement, filed December 23, 2005, Petitioners asserted that in their Environmental Report accompanying their Verified Notice of Exemption, filed September 23, 2005, Applicants had incorrectly stated that the Line, extending between MP 539.96 and MP 542.91 in Oklahoma City, had been leased by BNSF to SLWC., whereas in fact only the segments between MP 542.91 and MP 542.0 and between MP 540.0 and MP 539.96 had been leased by BNSF to SLWC, as authorized by the Board's Decision in STB Finance Docket No. 34610, Stillwater Central Railroad, Inc.-Lease Exemption-The Burlington Northern and Santa Fe Railway Company, served January 19, 2005. At page 5 of their Reply, Applicants say, "This is incorrect." Attached is a copy of page 14 of the Environmental Report, where Applicants state, "On December 29, 2004, BNSF leased this trackage [i.e., the Line] to SLWC."

At pages 3-4 of their Statement, Petitioners noted that the certification of BNSF's Mr. Batie was flawed because he had no personal knowledge of SLWC's operations on segments of the Line after they were leased to SLWC on December 29, 2004, just as the certification of SLWC's Mr. McKechnie III was flawed because he had no personal knowledge of BNSF's

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operations on any part of the Line before December 29, 2004. At page 6 of their Reply, Applicants maintain "SLWC's certification pertains to the time period after December 29, 2004 and BNSF's certification pertains to the time period from September 24, 2003 to December 29, 2004." Copies of the certifications of Messrs. Batie and McKechnie are attached, and they do not read as Applicants portray their contents in their Reply.

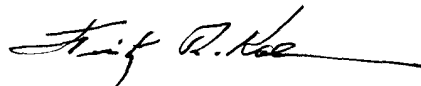
At page 4 of their Statement, petitioner noted that it is an improper use of the two-year out-of-service class exemption of 49 C.F.R. 1152.50 for an operator of a line proposed for abandonment who has not been in possession of the line for two years' time to tack the experience of a prior operator of the line in order to arrive at the conclusion that the line has been out of service for two years or longer. At page 7 of their Reply, Applicants contend, "[T]he Board and the ICC have consistently permitted the use of the class exemption where the line to be abandoned had both a landlord and tenant carrier." They, however, cite to two ICC trackage rights decisions, Missouri Pac. R. Co. - Aban. - Osage, Lyon & Morris Count. KS, 9 I.C.C.2d 1228 (1993) and Docket No. AB-55 (Sub-No. 478X), CSX Transportation, Inc.-Abandonment Exemption-In Bell County, KY, and Claiborne County, TN, served August 5, 1994, neither of which even remotely involved the tacking issue.

Ten copies of each of these letters are enclosed to permit your circulation of them. Additional copies are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the enclosed stamped and self-addressed envelope.

Service on BNSF and SLWC has been effected by mailing copies of this letter to their counsel.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

enc.

cc: Sidney L. Strickland, Jr., Esq.  
Karl Morell, Esq.

*(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;*

The right-of-way was acquired by the St Louis and San Francisco Railroad (SLSF) between 1887 and 1901. In 1980, the former Burlington Northern Railroad (BN) acquired the SLSF. In 1995, BN merged with The Atchison Topeka and Santa Fe Railway (ATSF) to become The Burlington Northern and Santa Fe Railway (BNSF). In 2005, BNSF changed its name to BNSF Railway Company. The Oklahoma City, OK Trackage has been used as an overhead route through Oklahoma City for over a hundred years. On December 29, 2004, BNSF leased this trackage to SLWC. The traffic moving over this route will be rerouted to another line in Oklahoma City to permit the relocation of Interstate 40, a major highway project in downtown Oklahoma City.

*(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;*

Applicants do not have any such documents.

*(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);*

Applicants believe none of the bridge structures affected by the proposed abandonment meet the criteria for listing on the National Register of Historic Places. The bridges are of ordinary construction and design. Importantly, Applicants have consulted with the Oklahoma Historic Preservation Office and that office has found that the four bridges (Shield Avenue Bridge and Bridges 384.64; 541.45 and 384.67) are not eligible for listing in the National Register of Historic Places. They also found: "The

**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS  
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

I, Richard A. Batie, being duly sworn depose and state that I am Manager, Network Development in the Network Development Department of the BNSF Railway Company ("BNSF"), that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

In accordance with 49 C.F.R. § 1152.50(b), I hereby certify that, with respect to the line which is the subject of the Notice of Exemption filed in Docket Nos. AB-6 (Sub-No. 430X) and AB-1040X, no local traffic has moved on the line for at least two (2) years prior to the date hereof. Also, the overhead traffic handled on the Line can be rerouted over other lines. Further, no formal complaint filed by a user of rail service on the Line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period.

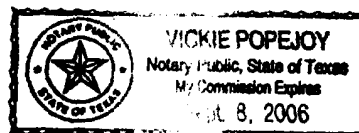
The foregoing certification is made on behalf of BNSF by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned

*Richard A. Batie*

Richard A. Batie  
Manager, Network Development

Subscribed and sworn to  
before me the 2nd day of September 2005.

*Vickie Popejoy*  
Notary Public



**VERIFICATION AND CERTIFICATION THAT RAIL LINE MEETS  
CRITERIA OF 49 C.F.R. SECTION 1152.50(b)**

STATE OF KANSAS                                 )  
                                                              )       ss.  
COUNTY OF CRAWFORD                         )

I, Arthur E. McKechnie III, being duly sworn depose and state that I am Assistant Secretary of Stillwater Central Railroad, Inc. ("SLWC"), that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

In accordance with 49 C.F.R. § 1152.50(b), I hereby certify that, with respect to the line which is the subject of the Notice of Exemption filed in Docket Nos. AB-6 (Sub-No. 430X ) and AB-1040X, no local traffic has been handled to or from any customer over the line for at least two (2) years prior to the date hereof. Also, the overhead traffic handled on the line will be rerouted. Further, no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period.

The foregoing certification is made on behalf of SLWC by the undersigned after due and careful investigation of the matters herein certified and based on the best of the knowledge, information, and belief of the undersigned

  
Arthur E. McKechnie III

SUBSCRIBED AND SWORN TO before me this 23 day of September, 2005, in the County of Crawford, State of Kansas.

My Commission Expires: Feb 12 2009

  
Notary Public

